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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,054	10/01/2003	Tom Evslin	449/115	8096
27538 7590 11/30/2009 GIBSON & DERNIER L.L.P. 900 ROUTE 9 NORTH SUITE 504 WOODBIDGE, NJ 07095				
EXAMINER				
AL AUBAIDI, RASHA S				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
11/30/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/677,054

**Applicant(s)**

EVSLIN, TOM

**Examiner**

RASHA S. AL AUBAIDI

**Art Unit**

2614

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. This in response to amendment filed 07/13/2009. Claims 36-38 have been added. No further claims have been canceled. No claims have been amended. Claims 22-38 are pending in this application.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 22-23, 28-29, 31, 33, 35-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwama (US PAT # 6,600,735).**

Regarding claims 22 and 35-36, Iwama teaches in Fig. 1 a basic structure of the invention wherein a calling party (105-a) at a PSTN (104-a) initiates a call set up to a called party (105-b) at PSTN (104-b) utilizing internet (110). Iwama also teaches in a case where a gateway device at a calling side (i.e., a call source), a gateway device at a called side (call destination) and a gate keeper are provided, the calling side gateway device which accepts a call reception from a PSTN assigns a connection condition such as the telephone number of a connection destination, etc. and inquires to the gate keeper. In response to this inquiry, the gate keeper determines the address of a called

side gateway device which satisfies the request condition, and notifies it to the calling side gateway device. Subsequently, the calling side gateway device proceeds in the connection of the call to the called side gateway device. When a call setup is accepted between the gateway devices at the calling side and the called side, audio data are transmitted/received according to a protocol for transferring real-time data. Thus, Iwama teaches a three-step procedures, that is, a procedure of **determining** the gateway device of a connection destination, a procedure of connecting a call to the gateway device thus determined and a procedure of transferring real-time information between the gateway devices thus connected are carried out for the call connection (see col. 1, lines 1-50, col. 2, lines 20-25 and lines 29-32).

Even though, Iwama teaches determining the destination gateway **prior** to sending the call which may be analogues to the claimed feature of "wherein said step of implementation call setup within said packet switched data network is carried after information on resources status in the second telephony network is available" .

However, Iwama does not specifically teach "implementation call setup within said packet switched data network is carried after information on resources status in the second telephony network is available".

However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to check the availability of the second/other network prior to set

up any calls. The Examiner believes that this limitation is old and well known feature in the art of telephony, in addition it is considered obvious if not inherent within the teachings of Iwama. Determining the availability of another entity or network before setting up a call, or sending a message is absolutely needed in order to save the resources and not waste any time attempting to connect or reach an entity or network that is not available. Also, Iwama teaches the use of a separate call signaling protocol (this can read on H.232 protocol, see col. 1, lines 15-18).

Regarding claim 23, limitations (this reads on the message transmitted between the calling side gateway and the called side gateway (see col. 8, lines 17-22).

For claim 28 limitations, see col. 1, lines 15-18.

For claim 29 limitations, see col. 8, lines 22-35.

Regarding claims 31, 33 and 38 limitations, see col. 8, lines 3-13 and col. 21, lines 29-40.

**Claims 24-27, 30, 32, 34 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwama (US PAT # 6,600,735) in view of Elliott et al. (US PAT # 6,614,781).**

Regarding claims 24 and 30, Iwama does not specifically teach that "the out of band signaling protocol is SS7", as recited in the claim language.

However, Elliott teaches the use of a SS7 protocol in a voice over data network architecture (see col. 4, lines 30-49).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of an old and well known protocol such as SS7, as taught by Elliott, into the teachings of Iwama in order to have faster call set up in addition to efficient use of network resources. Note that SS7 is a tested and reliable signaling protocol with global acceptance.

Claim 37 is rejected for the same reasons as discussed above with respect to claims 22 and 24, respectively.

For claim 25, Elliott teaches the use of sending IAM (Initial Address Message) see (Fig. 28 and corresponding text.)

For claims 26-27 and 32, Elliott teaches the use of ACM (Answer Complete Message) see Fig. 36 and corresponding text.

For claim 34, the send of a "release message" as recited in the claim language is obvious and well known in the art.

### ***Response to Arguments***

3. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments regarding the 35 U.S.C 102(e) is moot.

Note that, determining the availability of another entity or network before setting up a call, or sending a message is absolutely needed in order to save the resources and not waste any time attempting to connect or reach an entity or network that is not available.

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rasha S AL-Aubaidi whose telephone number is (571) 272-7481. The examiner can normally be reached on Monday-Friday from 8:30 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on (571) 272-7488.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rasha S AL-Aubaidi/

Primary Examiner, Art Unit 2614